


From: Ricker, Monique T. EOP/USTR Monique_T_Ricker@ustr.eop.gov 
Subject: RE: FOIA Request (USTR-19-0765)
Date: July 10, 2019 at 11:59 AM
To: American Oversight FOIA foia@americanoversight.org, FN-USTR-FOIA FN-USTR-FOIA@ustr.eop.gov



Mr. Wood,

This email is the final response of the Office of the United States Trade Representative (USTR) to Freedom of Information Act (FOIA) No. FY19-102 submitted on June 14, 2019 requesting "all records reflecting the content of a meeting titled 'Kushner/Luntz' that appears on the public calendar of U.S. Trade Representative Robert E. Lighthizer for June 5, 2018," as well as "all email communications (including emails, email attachments, and calendar invitations) including Frank Luntz or any person using an email address ending in @luntzglobal.com." The timeframe for the request is May 8, 2018, through June 19, 2018.

USTR did not restrict its eDiscovery search to Ambassador Lighthizer or Jamieson Greer. Rather we searched the emails, calendars and files of all current USTR employees for the search terms "Frank Luntz," "Kushner/Luntz," Luntz, or @luntzglobal.com.

Attached please find four responsive records totaling five pages which we are releasing in part. We redacted portions of the documents because we reasonably foresee that disclosure would harm an interest protected by FOIA Exemptions 5 or 6. Exemption 5 protects from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The materials are exempt under the deliberative process privilege, which protects the decision-making processes of the executive branch in order to safeguard the quality and integrity of governmental decisions. The deliberative process privilege protects materials that are both pre-decisional and deliberative. In this instance the privilege covers staff recommendations and opinions regarding whether the Ambassador should meet with specific individuals and what topics to address. The materials that have been withheld reflect the personal opinions of the writer rather than the policy of the agency. We also redacted non-public contact information and the Ambassador's personal appointments pursuant to FOIA Exemption 6, which protects personal information the release of which would not shed light on the performance of the agency's statutory duties.

This constitutes a complete response to your request. You may contact me or my colleague Melissa Keppel by email at FOIA@ustr.eop.gov or 202-395-3419 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with the response to this request, you may also administratively appeal by writing to: FOIA Office, GSD/RDF; ATTN: Janice Kaye, Anacostia Naval Annex, Bldg. 410/Door 123, 250 Murray Lane, S.W., Washington, D.C. 20509.

Monique T. Ricker, the assistant director for FOIA, submitted this response on the date

Your appeal must be postmarked or electronically transmitted within 90 days of the date of the response to your request. Both the letter and the envelope should be clearly marked: "Freedom of Information Act Appeal" and should include a reference to the FOIA Case File number listed above. Heightened security in force may delay mail delivery; therefore we suggest that you also email any such appeal to foia@ustr.eop.gov.

In the event you are dissatisfied with the results of any such appeal, judicial review will thereafter be available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, where we searched for the records you requested.

Thank you,
Monique

Monique T. Ricker
FOIA Program Manager/Attorney
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON DC 20508

From: American Oversight FOIA <foia@americanoversight.org>
Sent: Friday, June 14, 2019 2:23 PM
To: FN-USTR-FOIA <FN-USTR-FOIA@ustr.eop.gov>
Subject: [EXTERNAL] FOIA Request (USTR-19-0765)

Dear FOIA Officer:

Please find attached, and pasted below, are request for records under the Freedom of Information Act.

Sincerely,

Clay M. Goode
Paralegal
American Oversight
foia@americanoversight.org
www.americanoversight.org | @weareoversight

FOIA: USTR-19-0765

June 14, 2019

VIA ELECTRONIC MAIL

USTR FOIA Office, GSD/RDF
Attn: Chief FOIA Officer Janice Kaye
Office of the U.S. Trade Representative

Anacostia Naval Annex, Building 410/Door 123,
250 Murray Lane SW
Washington, DC 20509
FOIA@ustr.eop.gov

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and your agency's implementing regulations, American Oversight makes the following request for records.

Republican pollster and strategist Frank Luntz, despite early criticism of President Trump, has reportedly come to have some amount of influence on the Trump administration's public messaging. Mr. Luntz is a friend of Office of Management and Budget (OMB) director and acting White House chief of staff Mick Mulvaney, to whom he reportedly donated a two-day media training in Los Angeles in 2018. In addition, publicly released agency calendars and other documents show that Mr. Luntz has met with Labor Secretary Alex Acosta, Transportation Secretary Elaine Chao, and Education Secretary Betsy DeVos.

American Oversight seeks to shed light on the extent of Mr. Luntz's influence in the Trump administration, any messaging advice he is giving to government agencies, and any taxpayer funds that have been spent on his services.

Requested Records

American Oversight requests that the Office of the United States Trade Representative (USTR) produce the following records within twenty business days:

1. All records reflecting the content of a meeting titled "Kushner/Luntz" that appears on the public calendar of U.S. Trade Representative Robert E. Lighthizer for June 5, 2018. Responsive records would include any calendar entries, written communications about the meeting, agendas, lists of meeting attendees, minutes, summaries, handwritten notes, talking points, or materials displayed or exchanged during or after the meeting.
2. All email communications (including emails, email attachments, and calendar invitations) including Frank Luntz or any person using an email address ending in @luntzglobal.com.

American Oversight believes that USTR is in the best position to identify the custodians of responsive records. However, we request that USTR search, at a minimum, records maintained by:

- a) U.S. Trade Representative Robert E. Lighthizer and any person communicating on his behalf, such as a scheduler or assistant; and
- b) Chief of Staff Jamieson Greer.

Please produce all responsive records from May 8, 2018, through June 19, 2018.

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all records regarding agency business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Records of official business conducted using unofficial systems or stored outside of official files are subject to the Federal Records Act and FOIA. **It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; American Oversight has a right to records contained in those files even if material has not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.**

In addition, please note that in conducting a “reasonable search” as required by law, you must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered your agency’s prior FOIA practices unreasonable. **In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches. Furthermore, agencies that have adopted the National Archives and Records Administration (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files.** For example, a custodian may have deleted a responsive email from his or her email program, but your agency’s archiving tools would capture that email under Capstone. Accordingly, American Oversight insists that your agency use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. American Oversight is available to work with you to craft appropriate search terms. **However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.**

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.” If it is your position that any portion of the requested records is exempt from disclosure, American Oversight requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.” Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the

the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight hopes to decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format by email or in PDF or TIF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

Fee Waiver Request

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency’s implementing regulations, American Oversight requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute to public understanding of those operations. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of activities of the government. The disclosure of the information sought under this request will reveal the operations of the federal government. Specifically, little is known about the advice that pollster Frank Luntz is providing to the heads of federal agencies and how such advice may be impacting what those agencies say to the public. Yet Department of Education documents exist that show Mr. Luntz’s influence on federal messaging, indicating that Mr. Luntz provided substantive guidance on how to communicate on certain agency policies. The subject of this request is a matter of public interest, and the public’s understanding of the government’s activities and use of resources would be enhanced through American Oversight’s analysis and publication of these records. This request is primarily and fundamentally not for commercial purposes, but rather the primary interest is in public disclosure of responsive records. As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information

requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter. American Oversight has demonstrated its commitment to the public disclosure of documents and creation of editorial content. For example, after receiving records regarding an ethics waiver received by a senior DOJ attorney, American Oversight promptly posted the records to its website and published an analysis of what the records reflected about DOJ's process for ethics waivers. As another example, American Oversight has a project called "Audit the Wall," where the organization is gathering and analyzing information and commenting on public releases of information related to the administration's proposed construction of a barrier along the U.S.-Mexico border.

Accordingly, American Oversight qualifies for a fee waiver.

Conclusion

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact Hart Wood at foia@americanoversight.org or 202.873.1743. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

Austin R. Evers
Executive Director
American Oversight

U.S. Trade Representative, Calendar Logs, *available at* <https://ustr.gov/about-us/reading-room/freedom-information-act-foia/foia-library/frequently-requested-records> (last visited June 3, 2019).

See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy, 827 F.3d 145, 149–50 (D.C. Cir. 2016); *cf. Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955–56 (D.C. Cir. 2016).

See Competitive Enter. Inst. v. Office of Sci. & Tech. Policy, No. 14-cv-765, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

Presidential Memorandum—Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), ><https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records><; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), ><https://www.archives.gov/files/records-mgmt/m-12-18.pdf><.

FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

Founding Church of Scientology v. Bell, 603 F.2d 945, 949 (D.C. Cir. 1979).

King v. U.S. Dep’t of Justice, 830 F.2d 210, 223—24 (D.C. Cir. 1987) (emphasis in original).

Id. at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

Mead Data Central, 566 F.2d at 261.

Education Documents Regarding Frank Luntz Slide Presentation, AMERICAN OVERSIGHT, ><https://www.americanoversight.org/document/education-documents-regarding-frank-luntz-slide-presentation><

American Oversight currently has approximately 12,600 followers on Facebook and 54,100 followers on Twitter. American Oversight, FACEBOOK, ><https://www.facebook.com/weareoversight/>< (last visited June 3, 2019); American Oversight (@weareoversight), TWITTER, ><https://twitter.com/weareoversight>< (last visited June 3, 2019).

DOJ Records Relating to Solicitor General Noel Francisco’s Recusal, AMERICAN OVERSIGHT, ><https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance><.

Francisco & the Travel Ban: What We Learned from the DOJ Documents, AMERICAN OVERSIGHT, ><https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents><.

Audit the Wall, AMERICAN OVERSIGHT, ><https://www.americanoversight.org/investigation/audit-the-wall><.



USTR_FY19-102
_Relea...ted.pdf

Re: ARL Schedule for 6/5

From: jamieson.l.greer@ustr.eop.gov
To: "Bacak, Abigail R. EOP/USTR" <abigail.r.bacak@ustr.eop.gov>
Date: Mon, 04 Jun 2018 21:57:27 -0400

He will do Graham and the Jared-Luis meeting (at Jared's office)

No feedback on Jared - Luntz

Sent from my iPhone

On Jun 4, 2018, at 9:54 PM, Bacak, Abigail R. EOP/USTR <Abigail.R.Bacak@ustr.eop.gov> wrote:

All:

Below is ARL's current schedule for tomorrow. Please let me know if you have any questions.

X:XX am	Depart Residence
9:30 am	Trade Meeting
11:15 am	Possible Phone call with Senator Graham
11:30 am	Possible meeting with Jared Kushner (Jared's office)
3:00 pm	National Anthem Event (South Lawn)
3:30 pm	Possible meeting with Jared Kushner and Frank Luntz (Jared's Office)
4:00 pm	Meeting with Ambassador Hagerty

Abigail Bacak

Director of Scheduling and Advance
The Office of the United States Trade Representative
Executive Office of the President

Abigail.R.Bacak@ustr.eop.gov

(O) 202-395-9503 |(C) **Exemption 6**

requests

From : "Bacak, Abigail R. EOP/USTR" <abigail.r.bacak@ustr.eop.gov>

To: "Lighthizer, Robert E. EOP/USTR" <robert.e.lighthizer@ustr.eop.gov>, "Greer, Jamieson L. EOP/USTR" <jamieson.l.greer@ustr.eop.gov>

Date: Mon, 04 Jun 2018 17:02:33 -0400

1. Amb. Hagerty—His office offered 4 pm on June 5th. You are free and I put a block on the calendar
 2. Meeting time held on 6/6 (b) (5)
 3. Minister Prabhu would like to meet on June 12th at 2 pm, time is being held
 4. Ambassador Juster would like to come in the afternoon of the 21st. (b) (6)
 5. Senator Graham would like to speak on 6/5 at 11:15 am
 6. (b) (5)
 7. (b) (5)
 8. (b) (6)
 9. The Vietnamese DPM Hue has offered 2 time slots 10-10:45 am on 6/25 and 11-11:45 am on 6/26; they have also stated they are here on the 27th
 10. Jared's office offered 11:30 or 6 pm on 6/5 for his request with Videgaray
 11. Jared's office would like to know if you want to join a meeting with Frank Luntz 6/5 at 3:30
 12. (b) (6) doing dinner with (b) (6)
 13. (b) (5)
-

Abigail Bacak
Director of Scheduling and Advance
The Office of the United States Trade Representative
Executive Office of the President
Abigail.R.Bacak@ustr.eop.gov
(O) 202-395-9503 (C) Exemption 6

HOLD: MEETING: Kushner/Luntz

When: Tue Jun 05 15:30:00 2018 (America/New_York)

Until: Tue Jun 05 16:00:00 2018 (America/New_York)

Organiser: FN-USTR-SCHEDULING **Exemption 6**
[REDACTED]

Required
Attendee: FN-USTR-SCHEDULING <ustr_scheduling@ustr.eop.gov>

RE: Meeting with Frank Luntz tomorrow

From: "Dumbauld, Cassidy M. EOP/WHO" [Exemption 6]@who.eop.gov>
:
"Baker, Brittany G. EOP/WHO" [Exemption 6]@who.eop.gov>, "Gray, Alexander B. EOP/WHO" [Exemption 6]@who.eop.gov>, "Bacak, Abigail R. EOP/USTR" <abigail.r.bacak@ustr.eop.gov>, shirley.gathers@treasury.gov, zachary.mcentee@treasury.gov, "Cytryn, Jen B. EOP/WHO" [Exemption 6]@who.eop.gov>
To:
Date: Tue, 05 Jun 2018 12:54:59 -0400

Hi everyone –

As an FYI, the meeting has been pushed to start at 345 and will take place in the WARD ROOM.

Thank you all so much!

Cassidy

From: Dumbauld, Cassidy M. EOP/WHO
Sent: Monday, June 4, 2018 12:26 PM
To: Baker, Brittany G. EOP/WHO [Exemption 6]@who.eop.gov>; Gray, Alexander B. EOP/WHO [Exemption 6]@who.eop.gov>; Bacak, Abigail R. EOP/USTR <Abigail.R.Bacak@ustr.eop.gov>; 'Shirley.Gathers@treasury.gov' <Shirley.Gathers@treasury.gov>; Zachary.McEntee@treasury.gov; Cytryn, Jen B. EOP/WHO [Exemption 6]@who.eop.gov>
Subject: Meeting with Frank Luntz tomorrow

Hi all,

Jared is meeting with Frank Luntz tomorrow at 330pm (after the Eagles event) to discuss trade messaging – he is in town (b) (5)

Invited participants are:

Secretary Mnuchin
Ambassador Lighthizer
Stephen Miller
Larry Kudlow
Peter Navarro

Please let me know if your principle is able to attend.

Thank you!

Cassidy